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Human rights situations that require the Council's attention

Written statement* submitted by the Jammu and Kashmir Council for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Indian administered Jammu and Kashmir – status of Indian army

JKCHR wishes the 37th session of Human Rights Council, every success and sincerely hopes that under the guidance of its President Mr. Vojislav Šuc it would help the 'people whose rights have been taken away," regain their rights.

One such situation known to the United Nations for the last 70 years is the State of Jammu and Kashmir and its people, who ought to have gone through a UN supervised vote between April 1948 and October 1948, to determine their future. UN Security Council at its 606th meeting on 6 November 1952 has reiterated that "The ultimate objective of a fair and impartial plebiscite under the auspices of the United Nations has, after all, been written into solemn agreements by the two Governments and endorsed by this Security Council. These agreements have been affirmed and reaffirmed by the two governments many times during the last three and a half years. The transformation of this agreement into the reality of the actual voting ought not to present insuperable difficulties."

Although there is a UN brokered cease fire since January 1949 between India and Pakistan, Indian security forces have continued their instinct of indiscriminate killing in Kashmir. The stay of Indian security forces in Kashmir outside the terms of its agreement with the Kashmir government and the discipline imposed on its number, behaviour and location, by the UN Security Council makes it an instrument of occupation and oppression.

The situation has deteriorated to such disturbing levels that even Indian supported administration has raised a red flag. On 23 January 2018 chief minister of the Indian administered part of Kashmir made a written statement in the legislative assembly (elected from only a part of the territory) that in the last two years the government had imposed curfew, 186 times in the Valley.

Since 10 January 1990 and more so since June 1993 UN World Conference on Human Rights JKCHR has been reporting to the Human Rights Council (former Commission and Sub Commission) and other UN bodies that Kashmiri youth are a target population for Indian security forces. They have killed a generation in the last 27 years.
It is encouraging to see Australia, Belgium, Brazil, China, Egypt, Germany, Pakistan, United Kingdom of Great Britain and Northern Ireland and United States of America as members of the current session. These countries in particular have served on the UN Security Council and have finalised a mechanism for a free, secure and impartial plebiscite in Kashmir.

Human Rights Council has been listening to various views on Kashmir. It is time to revisit the Kashmir case as explained by Netherlands at the 566th meeting of UN Security Council held on 10 November 1951. Netherlands representative in the Security Council Mr. Von Balluseck stated, "The lack of agreement therefore, does not concern this right of self-determination. It concerns the ways and means and procedures to establish the conditions for a fair expression of the will of the people of the State of Jammu and Kashmir who want to make their choice free from any kind of fear or intimidation."

The above named 11 countries currently sitting on the Human Rights Council, know that India on 15 January 1948 at the 227th meeting of UN Security Council has surrendered itself for a UN supervised plebiscite. It testified that, "We desire only to see peace restored in Kashmir and to ensure that the people of Kashmir are left free to decide in an orderly and peaceful manner the future of their State. We have no further interest, and we have agreed that a plebiscite in Kashmir might take place under international auspices after peace and order have been established. Everything that we have done has been in discharge of our legal, constitutional, and moral responsibilities and obligations."

Human Rights Council has to check 'if governments do what they agreed on at the United Nations'. Indian army was called in relation to a 'grave situation' alleged by Pandit Nehru in his telegram addressed to Prime Minister of Pakistan and later the United Nations. A cease-fire brokered by UN between various elements, including India and Pakistan on 01 January 1949 has reversed the 'grave situation' allegation.

Today we do not have the Jammu and Kashmir that India wanted to defend on 27 October 1947. Jammu and Kashmir was entrusted to arrange a plebiscite in collaboration and under the supervision of UN. It was required to set up a provisional government under the supervision of United Nations, which had to be fully representative, including a representation from Azad Kashmir and Gilgit and Baltistan. The consent of Government of Pakistan as a party to the dispute was an essential.

Human Rights Council has to check upon the UN Security Council debate held at its 284th meeting on 17 April 1948. It was flagged that "the Kashmir dispute is the greatest and gravest single issue in international affairs". The Council should check upon the three Indian pledges - first pledge made to the people of the State on 27th October 1947, second pledge made to the Government of Pakistan on 31 October 1947 and the third pledge made to the international community at the UN on 15 January 1948. India has surrendered the merits of its accession to a UN supervised vote of the people of Jammu and Kashmir.

The dispute on the question of demilitarization, in particular, on the character and number of armed forces on either side of cease fire line, has stalled the implementation of UN Resolutions on Kashmir. The Council has a role to step in and encourage an equitable demilitarization. Council may need to encourage a reference to ICJ. United Kingdom had suggested on 22 November 1947 that a reference be made to ICJ. Pakistan was only 3 months old and for obvious reasons could not manage the proposed reference.

3 years and 9 months later on 27 August 1951, Office of South Asian Affairs and Office of United Nations Political and Security Affairs of United States prepared a document on Kashmir titled, "Kashmir Dispute: Future Action" . The document stated, "At some time in the course of our efforts, we might consider asking the Security Council to request the International Court of Justice to render an advisory opinion regarding the legality of the act of the Maharaja of Kashmir in signing an instrument of accession to India. If the ICJ finds the accession was invalid, this would knock out one of the principal Indian arguments supporting their occupation of Kashmir." US had taken United Kingdom's Foreign Office on board but the decision of going to ICJ was put on hold.

United States of America currently on the Human Rights Council carries a higher burden of responsibility, in regard to present Indian military oppression in Kashmir. US has to follow upon its proposal for demilitarization made at the 571th meeting of the Security Council. US managed an overwhelming influence in Kashmir dispute. Dr. P. F. Graham appointed as UN Representative for India and Pakistan and Admiral Chester Nimitz appointed as Plebiscite Administrator in Kashmir were both US citizens. US citizens were also in the UNCIP.

Human Rights Council, in particular Australia, Belgium, Brazil, China, Egypt, Germany, Pakistan, United Kingdom of Great Britain and Northern Ireland and United States of America as members of the current session, that have remained authors of a UN supervised vote in Kashmir, need to recommend a reference to ICJ on the following and query the status of Indian army:

1. Sheikh Abdullah gave an assurance at the UN Security Council on 5 February 1948, that "the Indian forces were there on a provisional basis and need not be feared because they would be supervised by the Commission of the UN Security Council."

2. The 'grave situation' pleaded by India on 27 October 1947 has been reversed by a UN brokered cease fire on 01 January 1949.

3. India has surrendered its accession at the UN on 15 January 1948 for a UN supervised vote.

Therefore, the status of Indian army does not remain the same as claimed on 27 October 1947. Indian army has over stayed its mandate and has violated the 4 stipulation placed in the bilateral agreement and 3 restraints placed on it by UN. The assurance of a supervision by the Commission has been missing. Indian army needs to be withdrawn. A component of UN forces needs to be added to UNMOGIP to maintain the character and dignity of the cease fire line, until UN resolutions are implemented. Council needs to help the people, whose rights have been taken away.

UN Secretary General Dag Hammarskjold visited Srinagar on Friday 20 March 1959. He was there from 20-22 March 1959 to assess the Kashmir situation. Human Rights Council could recommend another visit by the UN secretary general as highly desirable. Council could invite the UNMOGIP for a private discussion and a public debate on the massive wrong done by the Indian army to the people and habitat of Kashmir. In the interim there is a need to appoint a Special rapporteur on Kashmir.